

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1981 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
SHAKARAJI RAJAJI THAKOR & 2 - Defendant(s)

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Appearance :

MR KF DALAL for Appellant(s) : 1,
NOTICE NOT RECD BACK for Defendant(s) : 1,
(MR SG SHAH) for Defendant(s) : 1,
MR UTPAL M PANCHAL for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 21/08/2006****ORAL JUDGMENT**

1. By way of this appeal, the appellant has challenged the judgement and award dated 30.09.91 passed by the Motor Accident Claims Tribunal, Mehsana in MACT No. 504 of 1984 whereby the Tribunal awarded Rs. 45,000/- by way of compensation payable to the original claimant by the original opponents jointly and severally.

2. The original claimant had filed claim petition claiming compensation to the tune of Rs. 100000/- in respect of the accident which occurred on 14.08.83 when the original claimant was knocked down opposite Chirag

Cinema in Kalol town by a tractor bearing no. GAQ 7882 driven by original opponent no.1 and owned by original opponent no.2. The original claimant sustained serious injuries on the face, knee, leg and other parts of the body. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that in view of the statement mentioned in the complaint the false version of the applicant that he had got down from the tractor and was walking towards the petrol pump should not have been believed as the same was an afterthought to get compensation when he was not entitled to get any.

3.1 He has further contended that the original claimant was a passenger and the policy stipulated that the insurance company is not liable if the vehicle is used for hire or reward and that in the said circumstance, the quantum of the award is also beyond bracket as laid down by this Court and therefore the insurance company cannot be held liable.

4. Heard learned counsel and gone through the documents on record including the award of the Tribunal. In the instant case, there is a dispute regarding the actual

occurrence of the accident. If the version of the original claimant is to be considered, then the aspect regarding contributory negligence has to be taken into account. While deciding the issue of contributory negligence, the Tribunal has observed that in the panchnama there is no mention of any ditch due to which the tractor could jump and the applicant may fall down and therefore the more probable story is that the applicant actually got down from the tractor and while moving ahead, the tractor came from behind and knocked down the applicant. Moreover, in the absence of the deposition of the driver, the applicant's story is required to be accepted. I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal.

5. In case learned advocate for the appellant's contention regarding passenger carried for hire or reward is taken into account, in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs. 10000/-. The relevant part of the said section as existing at the time of the accident reads as under:

“95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any

liability incurred in respect of any one accident up to the following limits, namely:-

(a) xxx xxx xxx

(b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,

(ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger."

5.1 A perusal of the said section shows that the liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. However, the accident in question is of the year 1983 and during the relevant year the extent of the liability was upto Rs. 15000/- qua the Insurance Company. This view is supported by a decision of this Court in the case of **United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986(1) GLR 463** wherein it is held that under section 95(2) of Motor Vehicles Act (IV of 1959) the liability of

insurer in respect of a passenger carried for hire or reward by statute is limited to Rs. 10,000/- per individual passenger **which was later on enhanced to Rs.15,000/-**. In that view of the matter, the insurance company is liable to pay Rs. 15000/- by way of compensation. Since the amount of compensation payable by the insurance company is Rs. 15,000/- as per the award, no interference is required in the matter.

6. In the premises aforesaid, the present appeal is dismissed. No order as to costs.

[K.S. JHAVERI, J.]

Suresh*